WHS WASHTENAW IMPRESSIONS WHS

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Vol. IX, No. 1 Ann Arbor, Michigan February, 1951

THE HISTORY OF THE WASHTENAW COUNTY PROBATE AND JUVENILE COURT

By Judge Jay H. Payne
Judge of the Washtenaw County Probate and Juvenile Court

History has been defined facetiously as "something that never happened, written by a man who wasn't there." But Webster defines history as the record of past events, a continuous, systematic, written narrative in order of time, of past events, as relating to a particular people, country, period, or institution -- things historical as true and factual, as opposed to legend and fiction.

For much of the earlier material herein presented I am indebted to Miss Elizabeth Slack for lending me a copy of the 1881 History of Washtenaw County, to the staff of the Ann Arbor Public Library, to the State Librarian at Lansing, to the Children's Division of the Michigan Department of Social Welfare, to many local individuals with whom I discussed the manuscript, and last but not least to Mr. Wm. R. Stagg, my Court Register, who did the footwork in bringing much of the material to my desk. Also, I did not realize until I undertook the preparation of this paper how much one can himself remember about the institutions of a community in which he has spent the past uninterrupted 35 years of his life, as I have done in Ann Arbor. During the last 24 years I have been, as a member of the legal profession, in direct contact with all of the local Courts.

On June 30, 1805, Michigan became a separate Territory and President Thomas Jefferson appointed William Hull of Massachusetts to serve as Territorial Governor. By Act of Governor Hull on August 31, 1805, the Courts of the several districts in the Territory of Michigan, or any Judge of said Territory, or the Clerk of the Court of the District, were authorized to take the proof of Wills and grant letters testamentary and of administration over the estates of deceased persons.

In 1811 provision was made for the appointment in each district of a register, with essentially the same powers. Finally, in 1818, a Court of Probate was established in each county, to be held by some "able and learned person" appointed by the Governor from which Court appeal might be taken to the Supreme Court. These Courts continued in operation until after Michigan had become a State. There is need for constitutional revision here. Even now the Supreme Court Justice, the Circuit Judge, and the Probate Judge need not be lawyers.

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The records indicate that Bethuel Farrand was the first Judge of Probate to be appointed for the Washtenaw County District. He was appointed by the Territorial Governor in 1827, and held his first term of court on April 5 of that year. The Probate files in our present Court, which run from No. 1 to current No. 38,774, reveal that on April 5, 1827, Judge Ferrand held a hearing in the estate of George W. Noyes in which the original petition for probate of Will was filed on April 2. (The executor's fee in this case was $46.25!)

Although the History of Michigan says that Probate Judges were appointed, as heretofore stated, and not elected to office until the Revised Statutes of 1838, the History of Washtenaw County says that James Kingsley was elected in 1828 and reelected in 1832, serving two terms.

We know that Congressional recognition of Michigan as a State in the Union was delayed by a dispute with Ohio about Michigan's southern boundary. In 1835, the people of Michigan adopted a State Constitution and elected a complete set of State officers, with Stevens T. Mason as Governor. Later, this Constitution of 1835 was accepted by Congress without readoption, and Michigan was formally recognized by Congress as a State on January 26, 1837. The Revised Statutes of 1838, previously referred to, definitely made the office of Judge of Probate elective, for a term of four years, and provided that appeals from Probate Court might be taken either to the Circuit Court or directly to the Supreme Court.

While Michigan's admittance to the Union was being delayed, Robert S. Wilson had become Washtenaw County Probate Judge in 1836. George Sedgwick was elected in 1840 and served one full term. Samuel P. Fuller, who was elected in 1844, died before the expiration of his term and Elias M. Skinner was appointed to fill the vacancy.

The revision of 1846 provided for direct appeals from the Probate to the Circuit Court only. The Constitution of 1850 provided for a Probate Court in each of the 83 counties of the State, but their duties were not very specifically defined. In fact, the Constitution said that the jurisdiction, duties, and powers of Probate Courts were to be defined by the State Legislature. Under Legislative authority these consisted principally, in this era, of the administration of the estates of deceased persons, and the appointment of guardians over minors, imbeciles, drunkards, and spendthrifts. Certain other functions were from time to time added by acts of the Legislature.* This situation prevailed until the Constitution of

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* Among these "miscellaneous duties" have been: commitment to hospitals of insane and diseased persons; recommending Notary Publics; authorizing changes of name; establishing birth records; legalizing secret marriages; appointing tax allocation boards, election commissions, zoning boards, drain inquiries, condemnation commissions, soldiers' and sailors' committees.

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1908 which gave to Probate Courts, in addition to their strictly Probate duties, original jurisdiction in all cases of juvenile delinquents and dependents.

Churchill H. Van Cleve was elected in 1848; Chauncey Joslin in 1852; B. F. Granger in 1856; Thomas Ninde in 1860; Hiram J. Beakes in 1864 and reelected in 1868; Noah W. Cheever in 1872; and William D. Harriman in 1876 and reelected in 1880.

Although it is understood that the Judges on whom I have reported up to this point were elected at partisan elections, as candidates of political parties (the present non-partisan method was not adopted until 1939), their political affiliations are not listed in the records. However, the records do indicate that J. Willard Babbit was elected in 1888 as a candidate on the Democratic ticket and that he served until 1896, when a Republican, H. Wirt Newkirk, was elected Judge of Probate. It was my pleasure to know and work with Judge Newkirk when he served as Mayor of Ann Arbor many years later. Judge Newkirk was succeeded by another Democrat, Willis I. Watkins, in 1900.

Republican Emory E. Leland served from 1904 to 1912, and after William H. Murray, a Democrat, occupied the office from 1912 to 1916, Judge Leland was again elected and served from 1916 to 1924. The only ex-Judge of the Court who to my knowledge is still living is Judge Jay G. Pray, who was elected on the Republican ticket in 1924 and served until 1948. It was during his term of office that the Probate Judgeship was changed to a non-partisan office, and it was on that basis that I was elected in 1948.

Thoush the Constitution of 1835, previously mentioned in connection with Michigan's admission as a State, provided for a Probate Court without outlining its jurisdiction; and the Constitution of 1850 left the jurisdiction, duties, and powers of the Court to be prescribed by the Legislature, the Probate Court, probably as a result of its work in the field of guardianship of minors, evidenced an early interest in the welfare of children.

In 1855 Michigan established a Reform School for Boys (the forerunner of a very different institution which we know as the Boys' Vocational School) at Lansing. In 1873 we pioneered in the field of dependent and neglected children by establishing at Coldwater a State Public School for Orphans and Dependent Children (the forerunner of that present great child-care institution, the Michigan Children's Institute). The earliest evidence of the use of this institution by a Washtenaw County Judge of Probate is found in file No. 3277 in our present files, which contains proceedings by Judge Noah W. Cheever in a case involving a four-year-old child, with his mother, who were sent to the State Public School at Coldwater, on July 28, 1874.

In 1881 the Legislature passed the Protection of Children Act giving the Probate Court jurisdiction over adoptions and "ill treated and delinquent children." It was under this law that the Washtenaw County Probate Court heard its first co-called Juvenile

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Delinquency Case on July 5, 1907. This case, which is contained in Juvenile File No. 1 (current No. 5110) in the records of our Court, is captioned "Concerning a Wayward and Disobedient Child. The file shows that a warrant was issued and the fifteen-year-old boy was committed to the Lansing Reform School until eighteen years of age, by Judge Emory E. Leland during his first term of office.

The Constitution of 1908, our present Constitution, in its section on Judiciary, provides that the Probate Court shall have "original jurisdiction in all cases of juvenile delinquents and dependents." Although we have had no new State Constitution since 1908, our Legislature has, with the help of several Youth Guidance Advisory Councils and Governor's Youth Guidance Committees, passed considerable legislation for the welfare of juveniles, and this has been crystallized into a so-called Juvenile Code. As revised in 1944, this Code recognizes the basic needs of children and that it is the duty of the People of Michigan to provide for all children the proper atmosphere for their physical growth, their emotional growth, their spiritual growth, and their social growth.

The preamble to this Code states, "This Chapter shall be liberally construed to the end that each child coming within the jurisdiction of the Court shall receive such care, guidance and control, preferably in his own home, as will be conducive to the child's welfare and the best interest of the State, and that when such child is removed from the control of his parents the Court shall secure for him care, as nearly as possible, equivalent to the care which should have been given to him by them." This Code has been an elastic one; many a child coming before the Court as an alleged delinquent, found to be more sinned against than sinning, is then treated as a dependent, mentally ill, or other category, and placed accordingly.

COURT CREED

The Child and the Court. . .

This Court is dedicated to the service of every Child who is in conflict with Society, and guarantees to such Child the right to be dealt with intelligently as Society's charge. . .not Society's outcast.

It is the earnest endeavor of the Court with the help of the home, the School, the Church, and the Institution when needed, to return the Children with whom it has dealings to the normal stream of life, whenever and as soon as possible.

A brief review of the legislation which led up to the adoption of our excellent Juvenile Code of 1944 is especially interesting, and unquestionably reveals how community interest became a potent force in developing dynamic concepts about child health, care, education, and general welfare.

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financed experiments with foster care of delinquents. The White House Conferences on Children held in 1909, 1919, and 1930, the impact of the Federal Security Legislation of 1935, and the report of the Welfare and Relief Study Commission of 1936, all had their effect in the adoption of the principle, as we now know it, of helping a child in his own home through Aid to Dependent Children rather than a limited Mother's Pension.

Laws were passed which distinguished between permanent and temporary custody of children by the Court, so that it would clearly appear when parental rights were terminated. The Statutes relating to the Girls' Training School, the Boys' Vocational School, and the Michigan Children's Institute were amended. The law governing the licensing of placement agencies and foster homes was considerably strengthened. The compulsory school attendance law was amended, and a visiting teacher's program was launched. Provision was made for the admission of minors to State Hospitals, and an enabling act was passed permitting local appropriations to Child Guidance Clinics. One excellent example of the latter is the Huron Valley Child Guidance Clinic at Ypsilanti. As a member of the Board of Directors, I know how much it merits special tribute for the help it gives.

Under these laws as crystallized in our Juvenile Code, it has been my privilege, acting for you, the People of Washtenaw County, to serve almost 500 Washtenaw County children in various official ways during the past year. Although a review of these cases would be a story in itself, and one not appropriate to this paper, I take deep satisfaction in the realization that during the last year the Juvenile Division of your Washtenaw County Probate Court arranged for the hospitalization of 31 crippled and 194 afflicted children; completed the adoption of 65 children, most of them infants; and provided care for varying lengths of time for 107 dependent and neglected children of all ages up to seventeen. In addition, careful attention was given to 86 children before the Court for alleged delinquency, a considerable number of whom, with the assistance of the Neuropsychiatric Clinic at the University of Michigan, the Huron Valley Child Guidance Clinic, the Ypsilanti State Hospital, and other helpful agencies, were found to be troubled, emotionally disturbed, and in some instances mentally ill children, and were treated as such.

That the strictly Probate work of the Court has increased in the same proportion as the juvenile matters is evidenced by the fact that my Court Report for 1950 discloses that during the year initial proceedings were instituted for the probate of the estates of 346 deceased persons. Personal property of decedents was inventoried to the extent of $4,124,741, and real estate to the value of $2,031,276. During the year a total of 334 estates were closed for which proceedings were commenced in prior years. In this same period, the Court supervised the business of 196 guardians, who were responsible for $250,339 in real and personal property, and over half a million dollars in the hands of trustees.

Ann Arbor, Michigan
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